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September 21, 2009

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Minority Member
Committee on Financial Services
House of Representatives

Subject: *Federal Reserve System: Capital Adequacy Guidelines; Treatment of Perpetual Preferred Stock Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Board of Governors of the Federal Reserve System (Board), entitled “Capital Adequacy Guidelines; Treatment of Perpetual Preferred Stock Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008” (Docket No. R-1336). We received the rule on September 4, 2009. It was published in the *Federal Register* as a final rule on June 1, 2009. 74 Fed. Reg. 26,081.

The final rule permits bank holding companies that issue new senior perpetual preferred stock to the Treasury under the capital purchase program announced by the Secretary of the Treasury on October 14, 2008, to include such capital instruments in tier 1 capital for purposes of the Federal Reserve’s risk-based and leverage capital rules and guidelines for bank holding companies. The final rule adopts as final the interim final rule that became effective on October 17, 2008.

Enclosed is our assessment of the Board’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Board complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Linda Robertson
Assistant to the Board of Governors
Federal Reserve System

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL RESERVE SYSTEM
ENTITLED
"CAPITAL ADEQUACY GUIDELINES; TREATMENT OF
PERPETUAL PREFERRED STOCK ISSUED TO THE
UNITED STATES TREASURY UNDER THE
EMERGENCY ECONOMIC STABILIZATION ACT OF 2008"
(DOCKET NO. R-1336)

(i) Cost-benefit analysis

The Federal Reserve did not prepare a cost-benefit analysis. However, the final rule does explain that the Federal Reserve finds strong public policy considerations to allow Senior Perpetual Preferred Stock issued to Treasury under the Troubled Asset Relief Program (TARP) to be included as tier 1 capital for the purposes of the Federal Reserve's risk-based and leverage capital rules and guidelines, as an exception to its longstanding stance regarding the unacceptability of a rate step-up in other regulatory capital instruments.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Board certifies that this final rule will not affect a significant impact on a substantial number of small bank holding companies.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Unfunded Mandate Reform Act does not apply to independent regulatory agencies, such as the Federal Reserve.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On October 22, 2008, the Board published an "interim final rule with request for public comment" in the *Federal Register*. 73 Fed. Reg. 62,851. The Board received seven comments on the interim rule, and reviewed and analyzed those comments. On June 1, 2009, the Board decided to adopt the interim rule as a final rule without substantive changes. 74 Fed. Reg. 26,081.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains no collection of information requirements under the Paperwork Reduction Act.

Statutory authorization for the rule

This final rule is issued under the authority of the Emergency Economic Stabilization Act of 2008, Division A of Pub. L. 110-343, 122 Stat. 3765 (2008).

Executive Order No. 12,866 (Regulatory Planning and Review)

The Executive Order does not apply to independent regulatory agencies, such as the Federal Reserve.

Executive Order No. 13,132 (Federalism)

The Executive Order does not apply to independent regulatory agencies, such as the Federal Reserve.